

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAYNE DEE WELLS, JR,

Plaintiff,

v.

STEVEN DEMARS, et al.,

Defendants.

CASE NO. C11-5759 BHS-JRC

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 46), and Plaintiff Rayne Dee Wells, Jr.’s (“Wells”) objections to the R&R (Dkt. 54).

On November 19, 2012, Judge Creatura filed the R&R recommending that the Court grant Defendant Steven Demars’s (“Demars”) motion for summary judgment based on qualified immunity and lack of personal participation. Dkt. 46. Judge Creatura concluded that Demars was entitled to qualified immunity because there was no clearly established law that Wells had a federal right not to be placed on dry-cell watch. *Id.* at 4–7. Judge Creatura also concluded that Demars did not personally participate in the circumstances of Wells’s dry-cell watch. *Id.* at 7–8.

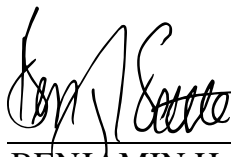
1 On January 11, 2013, Wells filed objections to both conclusions. Dkt. 54. On
2 January 18, 2012, Demars responded to the objections. Dkt. 55.

3 In this case, Wells fails to show any error in Judge Creatura's R&R. With regard
4 to qualified immunity, the Court agrees with Judge Creatura that there is no clearly
5 established federal right that a prisoner may not be placed on dry-cell watch for three
6 bowel movements or seven days maximum. With regard to personal participation, there
7 is no evidence that Demars personally participated in monitoring Wells during the dry-
8 cell watch.

9 Therefore, the Court having considered the R&R, Wells's objections, and the
10 remaining record, does hereby find and order as follows:

- 11 (1) The R&R is **ADOPTED**;
- 12 (2) Demars's motion for summary judgment is **GRANTED**;
- 13 (3) The Clerk shall enter **JUDGMENT** for Demars; and
- 14 (4) Wells's *in forma pauperis* status is **REVOKED**.

15 Dated this 11th day of February, 2013.

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18 BENJAMIN H. SETTLE
19 United States District Judge
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